

JUL 20 2007

NOT FOR PUBLICATION

at 7 o'clock and 10 min. PM
SUE BEITIA, CLERK

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUN 26 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ARIETA YAMAGUCHI,

Defendant - Appellant.

No. 05-10528

D.C. No. CR-02-00552-DAE

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
David A. Ezra, District Judge, Presiding

Submitted June 4, 2007**
Honolulu, Hawaii

Before: THOMPSON, BERZON, and TALLMAN, Circuit Judges.

Arieta Yamaguchi failed to file a notice of appeal within ten days of the entry of judgment. *See* Fed. R. App. P. 4(b)(1). The Commissioner's Order of October 11, 2005, dealt with the styling of the appeal, which we interpreted as an

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

attempted direct criminal appeal, and did not determine whether any appeal was timely. While filing a notice of appeal within sixty days of the entry of judgment would suffice for a habeas case, *see* Fed. R. App. P. 4(a)(1)(B), a notice of appeal for a direct criminal appeal must be filed within ten days, *see id.* at 4(b)(1).

Because the government raised the untimely nature of the notice in its responsive brief, we must dismiss the appeal for noncompliance with Rule 4(b). *See United States v. Sadler*, 480 F.3d 932, 939, 940 n.10. (9th Cir. 2007).

Were we to entertain the appeal, we would deny it. Having elected to represent herself after sufficient warning of the dangers of doing so, Yamaguchi is precluded from arguing that her self-representation was ineffective. *See United States v. Lopez-Osuna*, 242 F.3d 1191, 1200 (9th Cir. 2000); *see also Bribiesca v. Galaza*, 215 F.3d 1015, 1020 (9th Cir. 2000) (“In deciding whether a defendant has knowingly and intelligently decided to represent himself, the trial court is to look not to the quality of his representation, but rather to the quality of his decision.”).

DISMISSED.

